

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1002 be amended to read as follows:

- 1 Page 19, delete lines 41 through 42.
- 2 Page 20, delete lines 1 through 8.
- 3 Page 20, line 36, delete "file" and insert "**File**".
- 4 Page 20, line 41, delete "; or" and insert ".".
- 5 Page 20, line 42, delete "inform" and insert "**Inform**".
- 6 Page 21, delete lines 11 through 36.
- 7 Page 22, line 8, delete "Upon request of the prosecuting attorney,".
- 8 Page 22, delete lines 9 through 10.
- 9 Page 22, line 17, delete "or" and insert ",".
- 10 Page 22, line 17, after "indictment" insert ", or certify the case to
- 11 **the attorney general**".
- 12 Page 22, line 26, delete "request that the governor recommend" and
- 13 insert "**certify the matter to the attorney general, provide the**
- 14 **attorney general with the materials described in subsection (a), and**
- 15 **request that the attorney general seek appointment as a special**
- 16 **prosecuting attorney under IC 4-6-2.5 to prosecute the matter.**".
- 17 Page 22, delete lines 27 through 42.
- 18 Delete page 23.
- 19 Page 24, delete lines 1 through 33.
- 20 Page 25, between lines 26 and 27, begin a new paragraph and insert:
- 21 "SECTION 15. IC 4-6-2.5 IS ADDED TO THE INDIANA CODE
- 22 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 23 UPON PASSAGE]:
- 24 **Chapter 2.5. Duties as Special Prosecuting Attorney**
- 25 **Sec. 1. If a criminal matter is certified to the attorney general**

1 by:

2 (1) a prosecuting attorney under IC 33-39-1-5.5; or

3 (2) the inspector general under IC 4-2-7-7;

4 the attorney general may prosecute the criminal matter as a special
5 prosecuting attorney in accordance with this chapter.

6 Sec. 2. Upon request of a prosecuting attorney, the attorney
7 general may participate on behalf of the state in a criminal trial.

8 Sec. 3. (a) If a prosecuting attorney or the inspector general
9 certifies a criminal matter to the attorney general under IC 4-2-7-7
10 or IC 33-39-1-5.5 and the attorney general finds that there may be
11 probable cause to believe that a person identified in the certified
12 criminal matter has violated a criminal statute, the attorney
13 general may request that the governor recommend the attorney
14 general be appointed as a special prosecuting attorney so that the
15 attorney general may prosecute the matter addressed in the
16 certification.

17 (b) The governor may recommend the attorney general be
18 appointed as a special prosecuting attorney if:

19 (1) the criminal matter was properly certified to the attorney
20 general by a prosecuting attorney under IC 33-39-1-5.5 or the
21 inspector general under IC 4-2-7-7; and

22 (2) the governor finds that the appointment of the attorney
23 general as a special prosecuting attorney is in the best
24 interests of justice.

25 (c) If the governor has recommended the appointment of the
26 attorney general as a special prosecuting attorney, the attorney
27 general shall file a notice with the chief judge of the court of
28 appeals, stating:

29 (1) that the governor has recommended that the attorney
30 general be appointed as a special prosecuting attorney;

31 (2) the name of the county in which the crime that the
32 attorney general intends to prosecute is alleged to have been
33 committed; and

34 (3) that the attorney general requests the chief judge to assign
35 a court of appeals judge to determine whether the attorney
36 general should be appointed as a special prosecuting attorney.

37 Upon receipt of the notice, the chief judge of the court of appeals
38 shall assign a judge of the court of appeals from a district other
39 than the district in which the crime is alleged to have been
40 committed to determine whether the attorney general should be
41 appointed as a special prosecuting attorney.

42 (d) The attorney general shall file a verified petition for
43 appointment as a special prosecuting attorney with the court of
44 appeals judge assigned under subsection (c). In the verified
45 petition, the attorney general shall set forth why the attorney
46 general should be appointed as a special prosecuting attorney. The

1 attorney general may support the verified petition by including
 2 relevant documents, transcripts, or written statements in support
 3 of the attorney general's position. The attorney general shall serve
 4 a copy of the verified petition, along with any supporting evidence,
 5 on the prosecuting attorney to whom the case was originally
 6 certified.

7 (e) The prosecuting attorney shall file a verified petition in
 8 support of or opposition to the attorney general's verified petition
 9 for appointment as a special prosecuting attorney not later than
 10 fifteen (15) days after receipt of the attorney general's verified
 11 petition for appointment as a special prosecuting attorney.

12 (f) Upon a showing of particularized need, the court of appeals
 13 judge may order the verified petitions filed by the attorney general
 14 and the prosecuting attorney to be confidential.

15 (g) After considering the verified petitions, the court of appeals
 16 judge may appoint the attorney general as a special prosecuting
 17 attorney if the judge finds that:

18 (1) the criminal matter was properly certified to the attorney
 19 general under IC 4-2-7-7 or IC 33-39-1-5.5; and

20 (2) appointment of the attorney general as a special
 21 prosecuting attorney is in the best interests of justice.

22 In making its determination under this subsection, the court of
 23 appeals judge shall consider only the arguments and evidence
 24 contained in the verified petitions.

25 (h) Except as provided in subsection (j), an attorney general
 26 appointed to serve as a special prosecuting attorney has the same
 27 powers as the prosecuting attorney of the county. However, the
 28 court of appeals judge shall:

29 (1) limit the scope of the attorney general's duties as a special
 30 prosecuting attorney to include only the investigation or
 31 prosecution of a particular case or particular grand jury
 32 investigation, including any matter that reasonably results
 33 from the investigation, prosecution, or grand jury
 34 investigation; and

35 (2) establish the length of the attorney general's term as a
 36 special prosecuting attorney.

37 If the attorney general's investigation or prosecution acquires a
 38 broader scope or requires additional time to complete, the court of
 39 appeals judge may at any time increase the scope of the attorney
 40 general's duties or establish a longer term for the attorney general
 41 to serve as a special prosecuting attorney.

42 (i) An attorney general appointed to serve as a special
 43 prosecuting attorney may appoint one (1) or more deputy attorneys
 44 general who are licensed to practice law in Indiana to serve as a
 45 special deputy prosecuting attorney. A deputy attorney general
 46 appointed to serve as a special deputy prosecuting attorney is

1 subject to the same statutory restrictions and other restrictions
 2 imposed on the attorney general who is appointed to serve as a
 3 special prosecuting attorney, but otherwise has the same powers as
 4 a deputy prosecuting attorney.

5 (j) An attorney general appointed to serve as a special
 6 prosecuting attorney may bring a criminal charge only after
 7 obtaining an indictment from a grand jury. An attorney general
 8 appointed to serve as a special prosecuting attorney may not bring
 9 a criminal charge by filing an information.

10 (k) The attorney general or a deputy attorney general who is
 11 licensed to practice law in Indiana may serve as a special deputy
 12 prosecuting attorney under IC 33-39-2-6."

13 Page 25, delete lines 27 through 38.

14 Page 34, between lines 2 and 3, begin a new paragraph and insert:

15 "SECTION 23. IC 33-39-1-5.5 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. If the inspector general**
 18 **has certified a criminal matter to the prosecuting attorney under**
 19 **IC 4-2-7-7, not later than one hundred eighty (180) days after**
 20 **receipt of the certification, the prosecuting attorney shall:**

21 (1) prosecute the case;

22 (2) elect not to prosecute the case and refer the matter back to
 23 the inspector general; or

24 (3) certify the case to the attorney general with the request
 25 that the attorney general seek appointment under IC 4-6-2.5
 26 as a special prosecuting attorney and prosecute the case."

27 Page 34, delete lines 3 through 8.

28 Page 34, line 10, strike "(a)".

29 Page 34, line 12, delete "IC 4-2-7-7." and insert "IC 4-6-2.5".

30 Page 35, strike lines 1 through 42.

31 Page 36, strike lines 1 through 10.

32 Page 36, line 14, delete "inspector general or" and insert "**attorney**
 33 **general or**".

34 Page 36, line 14, after "deputy" delete "inspector" and insert
 35 "**attorney**".

36 Page 36, delete lines 17 through 42.

- 1 Delete pages 37 through 39.
- 2 Page 40, delete lines 1 through 26.
- 3 Renumber all SECTIONS consecutively.
(Reference is to HB 1002 as printed February 16, 2005.)

Representative Welch